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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,273	12/14/2001	Lirio Quintero	154-26969-US	3997

23770 7590 03/10/2005

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EXAMINER

TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/023,273

Applicant(s)

QUINTERO, LIRIO

Examiner

Philip C Tucker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/15/04 request for RCE.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 376-391 and 620-666 is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) See Continuation Sheet is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims pending in the application are 329-391,413,415-435,437-462,465-471,473-488,492-501,503-507,523-544,546-549 and 576-671.

Continuation of Disposition of Claims: Claims rejected are 329-357,370,372,413,415,422,425,429,430,432-435,437-439,441,446-462,465-471,473-476,481-488,492-501,503-505,523,524,531-544,546-549,576,577,581,582,586-588,592-604,607-613,615-619 and 667-671.

Continuation of Disposition of Claims: Claims objected to are 5,358-369,371,373,416-421,423,424,426-428,431,440,442-445,477-480,506,507,525-530,578-580,583-585,589-591,605,606 and 614.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/15/04 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 667-671 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 667-671 depend from claim 690, which is not present in the application.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 329, 334,335, 339-341, 343, 346,347, 349, 350, 352-357, 370 and 372 are rejected under 35 U.S.C. 102(b) as being anticipated by House (5977030).

House teaches a water in oil fluid which is used as a drilling fluid which comprises an oligosaccharide surfactant and a xanthan polymer (see the examples). The surfactant is specified at a level of 2 lb/bbl (column 3, lines 55-56). The xanthan used would have molecular weights within the scope of the present invention (see column 4, lines 24-34). Other polymers, such as starch derivatives may be used in the drilling fluid (see column 4, lines 56-65). The amount of water soluble polysaccharide is specified at a level of "about 6 ppb" which anticipates the "about 7.5 ppb" of the present invention (see *In re Pappas* 102 USPQ 298, *In re DeVaney* 88 USPQ 97). Fluids such as olefins and polyalphaolefins may be used as the internal phase, up to a level of about 30% (see column 3, lines 20-26 and example 1). Such would inherently possess fluid loss, rheology and surface tension properties within the scope of the present invention.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 413, 415, 422, 425, 429, 430, 432-435, 437-439, 441, 446-462, 465-471, 473-476, 481-488, 492-501, 503-505, 523-524, 531-544, 546-549, 576, 577, 581, 582, 586-588, 592-604, 607-613, 615-619 are rejected under 35 U.S.C. 103(a) as being unpatentable over House (5977030).

House teaches a water in oil fluid which is used as a drilling fluid which comprises an oligosaccharide surfactant and a xanthan polymer (see the examples). The surfactant is specified at a level of 2 lb/bbl (column 3, lines 55-56). The xanthan used would have molecular weights within the scope of the present invention (see column 4, lines 24-34). Other polymers, such as starch derivatives may be used in the drilling fluid (see column 4, lines 56-65). Fluids such as olefins and polyalphaolefins may be used as the internal phase, up to a level of about 30% (see column 3, lines 20-26 and example 1). House differs from the present invention in that molecular weight of the starch is not disclosed, and the range of concentrations of claim 603 is not disclosed. The range of molecular weights claimed from 200,000 to 2,500,000 is within the typical molecular weights of starches used in drilling fluids, and their use would be obvious to one of ordinary skill in the art. The range of concentration of from 10-90% of one polymer and 90-10% of the other covers almost the entire range of possible combinations of the polymers, and thus would be obvious to one of ordinary skill in the art, absent a showing that this range is critical.

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5. Claims 329-338, 341-357 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sydansk ((5513712).

Sydansk teaches a drilling fluid which comprises a water soluble polyacrylamide and a surfactant, which can be at levels within the scope of the present invention (see column 6, lines 21-30). The surfactant may be ethoxylated sulfates (column 6, line 2), with tridecyl inclusive in the C12-15 ethoxylated sulfate disclosed in Example 1. as is well known in the art such surfactants are typically used in the form of their sodium salts. Sydansk differs from the present invention in that a specific example of the drilling fluid comprising the polymer at 7.5 lb/bbl and surfactant at 2 lb/bbl is not disclosed. It would however be obvious to one of ordinary skill in the art to make and use drilling fluids within the scope of sydansk comprising 7.5 lb/bbl of polymer and 2 lb/bbl surfactant, given the teaching of Sydansk that such are useful concentration ranges for the drilling fluid.

6. Claims 376-391 and 620-666 are allowable over the art of record.

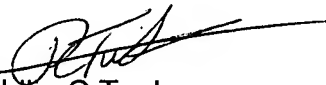
7. Other claims of record are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Philip C Tucker  
Primary Examiner  
Art Unit 1712

PCT-3297